IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.10862 of 2000 TO 10864/2000,
10867/2000,10870/2000 & 10873/2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANUBHAI KHIMABHAI

Versus

DISTRICT REGISTRAR

Appearance:

MR BN KAKADIYA for Petitioners

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/12/2000

COMMON ORAL JUDGEMENT

The petitioners by way of filing this petition have challenged the common order dated 27-12-99, passed by the Gujarat State Cooperative Tribunal, Ahmedabad, upon Restoration Applications and prayed to direct the Tribunal to condone the delay and restore Appeal No.212/96, 9/95, 239/95, 387/95, 238/95 AND 40/96 on file.

2. Brief facts of the case are such that the District Registrar, Cooperative Society had passed an order dated 16th June, 1996, under Section 93 of the Gujarat Cooperative Societies Act, 1961, for holding an inquiry against the petitioners. In the said inquiry, the petitioners were found to be liable by the order dated 16th June, 1996, and therefore, the petitioners filed Appeal Nos. 212/96, 9/95, 239/95, 387/95, 238/95 and 40/96 before the Gujarat State Cooperative Tribunal, Ahmedabad. The said appeals came to be dismissed for default on 27-12-98. Against the said order dated 27-12-98, the petitioners preferred applications for condonation of delay as well as for restoration being Misc. Application No.75/98, 12/98, 74/98, 76/98, 22/99 and 23/99. The tribunal after giving an opportunity to learned advocates appearing for the respective parties rejected the restoration applications on merits vide common order dated 27-12-99. Hence, this petition.

3. I have gone through the order passed by the tribunal. From the record and proceedings and order passed by the tribunal it appears that learned advocate for the appellants in above mentioned appeal came out with a specific plea that due to unavoidable circumstances he could not remain present in the Court and he instructed his colleague to appear before the tribunal and pray for time, but because of sickness of his mother, he could not remain present before the tribunal and as a result of which the above mentioned Appeal Nos. 212/96, 9/95, 239/95, 387/95, 238/95 and 40/96 came to be dismissed in the absence of learned advocate for the appellant. The tribunal has not accepted the above aspect of the matter and dismissed the restoration application on merits.

4. I have heard learned advocate Mr. Paresh Adhvaryu for Mr.Kakadiya for the petitioner and Mr. Sudhanshu Patel for the respondent. Learned advocate for the petitioner has relied upon a decision reported in A.I.R. 1981 S.C. 1400 Rafiq and another v. Munshilal and another wherein it is held as under :

> "Where an appeal filed by the appellant was disposed of in absence of his counsel, so also his application for recall of order of dismissal was rejected by the High Court, the Supreme Court in appeal set aside both the orders of dismissal on ground that a party who, as per the present adversary legal system, has selected his advocate, briefed him and paid his fee can remain

supremely confident that his lawyer will look after his interest and such a innocent party who has done everything in his power and expected of him, should not suffer for the inaction, deliberate omission or misdemeanour of his counsel. Civil Misc. App. No.113 of 1981 in Second Appeal No.1484 of 1973, D/- 7-1-1981 (All) Reversed."

Relying upon the said judgment, learned advocate for the petitioner has argued that the aforesaid judgment is applicable to the facts of present case by all fours. There is some substance in the arguments made by learned advocate for the petitioner and the tribunal while rejecting the restoration application ought to have considered the above aspect of the matter, but the tribunal failed to do so. Therefore, the order passed by the tribunal in Misc. Application No.75 of 1998 is required to be quashed and set aside.

5. As a result of the foregoing discussion, the petitions are allowed. The common order dated 27-12-99, passed by the Gujarat State Cooperative Tribunal below Restoration Applications 75/98, 12/98, 74/98, 76/98, 22/99 and 23/99 is hereby quashed and set aside and Appeal Nos. 212/96, 9/95, 239/95, 387/95, 238/95 and 40/96 are ordered to be restored on file. The tribunal is directed to dispose of Appeal No. 212/96, 9/95, 239/95, 387/95, 238/95 and 40/96 on merits within three months from the date of receipt of this order. Learned advocate for the petitioner has given assurance to this Court that unnecessarily they will not ask any adjournment and they will remain present before the tribunal and will give full cooperation. Rule is made absolute to the aforesaid extent.

(R.P.Dholakia, J.)

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